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For-Profit Colleges Under CFPB Scrutiny for Lending Practices; Experts Expect Data Sharing with Education Department

The Consumer Financial Protection Bureau is becoming a new threat to for-profit colleges as the regulator signaled last week that it will examine institutional practices around lending money to students and collecting on those loans.

For-profit institutions that engage in institutional lending to students include the publicly traded Universal Technical Institute (UTI), Lincoln Educational Services Corporation (LINC), Adtalem Global Education (ATGE) and Perdoceo Education (PRDO).

Many public and nonprofit universities also lend directly to students, but for-profit colleges are most likely to engage in the unsavory practices that the CFPB said it would be focusing on, experts say, such as withholding transcripts until a balance is paid, pulling students out of class until payments are made, and accelerating payment schedules if a student drops out of school.

Higher education experts say engaging in this type of lending helps institutions to stay within Education Department "90-10" rules, which require for-profits to take in 10 percent of their revenue from sources other than federal student loans, called Title IV funds.

Enforcement action by the CFPB could open companies up to scrutiny by ED if the two agencies cooperate. Several of the for-profits using institutional loans have provisional program participation agreements with ED, meaning the department can discipline them with fewer due process restrictions. Personnel from CFPB and ED have overlapped in recent years, creating a potentially troubling landscape for for-profit institutions. Experts say cooperation between the agencies or joint enforcement action is certainly possible and something to watch.

The CFPB's authority over private student lenders does not apply only to the largest players in the market, as it does with other financial sectors.

"I would be very concerned, if I were a for-profit college, regardless of the size, that even if I'm making a dollar from private student loans, the CFPB could come knocking," said Mike Pierce, executive director of the Student Borrower Protection Center who previously served as senior advisor to the student loan ombudsman at CFPB. "This should be perceived as a shot across the bow and a reminder that schools of all sizes have these compliance obligations under consumer financial law."

The CFPB is concerned about institutional loans, the agency said in its announcement, because of a history of past abuses in the industry, notably ITT Technical Institute and Corinthian Colleges.

Both of those institutions collapsed under the weight of enforcement actions by CFPB and ED in the mid-2010s.

CFPB procedures around education loans encourage examiners to obtain and review organizational charts, rate and fee sheets, loan applications and training materials, among other documents, from institutions. The bureau will likely start with institutions that may confer the most risk to consumers, higher education experts tell *Capitol Forum*, making it likely that for-profit universities will be high on the list, owing to a history of lawsuits and borrower defense to repayment claims in the industry.

"Essentially every for-profit institution we've looked at does [institutional loans]," said Christopher Madaio, vice president for legal affairs at Veterans Education Success. Depending on the circumstances, students may not fully understand that they are taking out a loan, he added. They may instead believe they just have a "balance" to repay the institution or tuition, as some loans do not advance cash to students.

Institutional loans grew as a practice after the 2008 financial crisis, as banks were less likely to loan money to students at for-profit colleges, Pierce said. After the collapse of ITT Tech and Corinthian, loans from for-profit colleges began to look less and less like loans most people are used to, with contracts and terms laid out, he said. A significant portion of these debts originate when students try to withdraw their enrollment and return their Federal Pell Grants, but the college still keeps them on the hook for tuition.

Pierce, who worked at the bureau for seven years, said the agency will likely take an expansive view of lending practices in its examinations, looking at these nontraditional loans as well as more traditional financial products offered by colleges.

Lincoln Educational Services Corporation, which operates 23 campuses, extends credit to students for tuition and fees after federal loans have been stretched as far as they can reach, using creditworthiness to determine a student's ability to pay, the company outlined in its most recent annual SEC filing. The company has raised tuition by 2-3 percent each year and restructured programs to reduce the amount of financial aid available to students. According to its most recent quarterly filing, Lincoln has $30.3 million outstanding loan principal commitments to active students, according to a quarterly filing, though those are not reported on financial balance sheets. All of Lincoln's institutions are provisionally certified by ED.

Universal Technical Institute, which has 13 campuses, operates a private loan program with a bank, giving students extended payment terms for part of their tuition, not extending cash, the company outlined in its most recent annual filing. These loans bear interest rates of 7 to 10 percent, with payments due six months after departure—via graduation or withdrawal—from the college. Repayment terms are up to 10 years. In order to collect on the loans, UTI uses internal personnel as well as third party collectors.

Adtalem Global Education, according to its most recent annual filing, offers credit extension programs to students at some of its schools, with interest rates from 3 to 12 percent. Most students are required to begin repayment while they are still in school. Several of Adtalem's schools are under provisional certification from ED.

Perdoceo Education Corporation, which operates two schools, also extends credit to students, although it does not charge interest or fees on those payment plans, according to its most recent quarterly filing. The company announced Perdoceo CEO and President Todd Nelson would be vacating his role on Jan 20, the same day CFPB examinations were announced. He is remaining as executive chairman and being replaced in his previous roles by Andrew Hurst, formerly senior vice president at Colorado Technical University, a Perdoceo institution. Hurst was previously in management at Education Management Corporation, which in 2015 settled with the Department of Justice for $95.5 million after claims of illegal recruiting and consumer fraud.

The withholding of transcripts until all debts are paid, Pierce said, is nearly universal across the entire higher education sector, including at nonprofit and public colleges. Education Secretary Miguel Cardona called for changing the practice in December.

Though it's likely CFPB examinations could end some of the worst predatory practices around institutional loans, said Julia Barnard, researcher at the Center for Responsible Lending, for-profit colleges will still have the opportunity to be involved in institutional lending without those strongarm practices.

As part of the American Rescue Plan, Congress voted to close 90-10 loopholes. What those regulations will look like is still subject to negotiated rulemaking within ED, however the department has proposed no longer counting the sale of institutional loans in the '10' part of the equation. The rule will not take effect until 2023.

Critics of for-profit colleges applauded CFPB Director Rohit Chopra's efforts to rein in the industry and note that he has a history in the field. Formerly a commissioner at the Federal Trade Commission, Chopra helped lead that agency's effort to put 70 for-profit and vocational institutions on notice for unfair and deceptive practices. In 2019, the FTC took action against the University of Phoenix for false job placement promises, which Chopra in a statement said he hoped marked the beginning of a more concerted effort to safeguard students. During the Obama administration, he was the top student loan official at the CFPB and later moved to ED to work on student loan and consumer issues.

"Throughout his career he has been skeptical that for-profit higher education offers value to students and families and he's been a really strong advocate for people with student debt," said Pierce, who worked under Chopra at the CFPB. "He has always taken this consumer financial protection lens to the problem of predatory higher education. That was true at the CFPB. It was true when he was a commissioner at the Federal Trade Commission and I am sure that it will be true as director of CFPB."

The director isn't the only person at one agency with ties to another. Rich Cordray, currently chief operating officer of federal student aid at ED, was formerly director of CFPB from 2012 to 2017. Kristin Donoghue, hired in July to lead the enforcement office at FSA, previously served as enforcement director at the CFPB.

The CFPB has also hired former advocates who are noted for-profit critics, including Seth Frotman, who previously led the Student Borrower Protection Center and served as CFPB's student loan ombudsman, and Yan Cao, a former fellow with the Century Foundation.

Perdoceo, Adtalem Global, UTI, and Lincoln did not respond to requests for comment.